

Minnesota Pollution Control Agency  
Model Restrictive Covenant  
*For IC Roundtable Conference  
Tucson, Arizona; April 4-6, 2006*

*[Note: Leave three inches of blank space above text of document.]*

DECLARATION OF RESTRICTIONS AND COVENANTS

THIS DECLARATION is made by <Owner> (“<Name>”).

WITNESSETH:

WHEREAS, <Name> is the fee owner of certain real property located in \_\_\_\_ County, Minnesota, as described herein (the “Property”); and

WHEREAS, **[recite the facts about the involvement of the MPCA with the property, such as through the Superfund Program, Landfill Cleanup Program, or VIC Program. The following text gives an example:** Pursuant to the Minnesota Environmental Response and Liability Act, Minn. Stat. §§ 115B.01-.24 (2004), [*or* the Land Recycling Act of 1992, as amended,] <Name> entered into Response Order by Consent (“Consent Order”) [*or* Voluntary Response Action Agreement (“Agreement”)] with the Minnesota Pollution Control Agency (“MPCA”) dated <date> concerning the Property]; and

WHEREAS, **[describe the MPCA action [e.g., selection of Superfund remedy, issuance of VIC certificate of completion, etc.] that provides the basis for allowing the residual contamination levels, and describe associated engineering controls or monitoring systems and remediation systems; and**

WHEREAS, [state the location of the area(s) of the property where contamination remains, including a precise description of the identity, quantity, location and condition of the contamination remaining on the property (and off the property if appropriate) and may include a registered survey of the area of contamination]; and

WHEREAS, [*include if applicable:* under the Consent Order [*or* Agreement,] [*or* as a condition of a liability assurance issued by the VIC Program] <Name> has agreed to place a Restrictive Covenant on [the Property] [*or*] [certain portions of the Property which are hereinafter described] for the purpose of protecting public health or welfare or the environment.

NOW, THEREFORE, <Name> makes the following declarations as to limitations, restrictions and uses to which the Property may be put, and specifies that such declarations shall constitute covenants to run with the Property as provided by law and shall be binding on <Name>, its successors or assigns, all present or future owners of the Property, and all parties who now or hereafter have or hold any right, title or interest in the Property:

1. Definitions.

[a.] As used herein, “Owner” means <Name>, which is the grantor of the rights and covenants created in this Declaration, and includes <Name’s> successors and assigns, and all present and future owners of the Property:

[b.] As used herein, “Property” means the real property owned by <Name> located [at **street address, if available**] in \_\_\_\_\_ County, Minnesota, shown on Exhibit 1 hereto and legally described as follows:

**[Insert legal description of property]**

[c.] As used herein, “Restricted Area(s)” means those areas of the Property depicted and identified on the General Site Plan attached hereto as Exhibit <> and made a part

hereof by reference, and legally described as follows: *(Do not include “Restricted Area(s)” definition if entire Property is restricted)*

**Insert precise legal description of restricted area(s) and survey locations if needed]**

2. Use Restrictions.

Subject to the terms and conditions of this Declaration and the reservation and covenants contained herein, <Name> hereby declares and imposes the following restrictions (“Restrictions”) on the [Property] *[or]* [Restricted Area]:

**[Insert precise description of use or activity restrictions. The following text gives an example:** No disturbance or alteration of any nature whatsoever, specifically including, but not limited to, grading, excavation, boring, drilling or construction, shall occur on, above, beneath or adjacent to the [Property] *[or]* [Restricted Area(s)].

Any activity on or alteration of the [Property] *[or]* [Restricted Area(s)] prohibited by the Restrictions shall not occur without the prior written approval of the Commissioner of the MPCA or her successor (the “Commissioner”). The Commissioner’s approval may include conditions which the Commissioner deems reasonable and necessary to protect public health or welfare or the environment, including submission to and approval by MPCA of a contingency plan for the activity or alteration, and such approval shall not be unreasonably withheld. The Restrictions do not apply to, and no prior approval of the Commissioner shall be required for, activities *[add only if Restrictions are limited to Restricted Area(s):* on that portion of the Property outside of the Restricted Area(s),] including maintenance or repair of existing buildings, structures, underground sewer, water, electrical or telephone services, or installation of fencing and signage, when such activities are not expected to or are not reasonably likely to result in disturbance of or intrusion into *[include applicable media:* [soil] [ground water]

[and/or] [surface waters] [*add only if Restrictions are limited to Restricted Area(s):* within the Restricted Area(s).]

Within 60 days after receipt of a written request for approval to engage in any activities subject to the Restrictions, the MPCA shall respond, in writing, by approving such request, disapproving such request, or requiring that additional information be provided. A lack of response from the Commissioner shall not constitute approval by default or authorization to proceed with the proposed activity.

3. Maintenance Requirements. (*Include when applicable. If not included, renumber subsequent paragraphs and cross-references accordingly.*)

**[Insert a description of the obligations which are necessary to ensure an acceptable level of risk. Such obligations may include: continued proper operation of remedial actions; periodic monitoring (e.g., ground water, surface water, air, soil); maintenance and repair of monitoring systems, permeable covers (e.g., vegetative ground cover), impervious covers (e.g., pavement); or specific procedures governing excavation activities to protect workers and site neighbors, and the erection and maintenance of fences to prohibit access of unauthorized persons to the site.]**

4. Covenants.

<Name> hereby covenants that the Property shall not be held, transferred, sold, conveyed, occupied, altered, or used in violation of the Restrictions set forth in Section 2 [*add if applicable:* and the Maintenance Requirements of Section 3] of this Declaration.

5. Reservations.

Nothing contained in this Declaration shall in any way prohibit, restrict or limit Owner, from fully conveying, transferring, occupying or using the Property for all purposes not inconsistent with the Restrictions [*add if applicable*: or the Maintenance Requirements].

6. Duration; Amendment.

In accordance with Minn. Stat. § 115B.17, subd. 15 and Minn. Stat. § 84C.02(c), this Declaration and the covenants, grants and Restrictions [and Maintenance Requirements] herein are unlimited in duration unless terminated, released and/or amended with the written consent of the Commissioner or her successor, such consent not to be unreasonably withheld. Notwithstanding the foregoing, this Declaration and the covenants, grants and Restrictions set forth herein may be terminated, released and/or amended upon the occurrence and satisfaction of the following conditions:

a. [*include applicable media*: [soil] [ground water] [and/or] [surface water] sampling is conducted on the [Property] [*or*] [Restricted Area(s)] with prior written notice to and in accordance with a plan approved by the MPCA, such approval not to be unreasonably withheld; and

b. based on such samples the MPCA determines that contaminants in the [*include applicable media*: [soil] [ground water] [and/or] [surface waters] located within the [Property] [*or*] [Restricted Area(s)] no longer pose a potential threat to human health or welfare or the environment.

This Declaration and the covenants, grants and Restrictions [and Maintenance Requirements] herein may be amended if the MPCA finds that the conditions set forth in Section 2 or 3 of this Declaration are inadequate to protect public health or welfare or the environment

***[if there is a document establishing clean-up levels for the property, add: as set forth in <Name and date of document>.***

If Owner and the Commissioner agree to amend this Declaration, or if the Commissioner decides to terminate or release this Declaration, the Commissioner shall, within 60 days after receipt of written request from the owner of the Property, execute and deliver to Owner an instrument in recordable form, amending, terminating, or releasing this Declaration.

7. Grant and Conveyance to MPCA: Right of Entry.

Subject to the terms and conditions of this Declaration, <Name> grants and conveys to the MPCA and its successors such rights and interest in the Property as are necessary and convenient to enforce the Restrictions set forth in section 2 of this Declaration [and Maintenance Requirements set forth in Section 3], including the right of the MPCA, its employees, its agents, contractors and subcontractors, upon reasonable notice to the then-current owner and at reasonable times, to enter from time to time upon the Property to inspect the [Property] ***[or]*** [Restricted Area(s)] and verify compliance with the Restrictions [and Maintenance Requirements]. The Restrictions declared and the rights and interest granted under this Declaration of Restrictions shall run with the Property and bind <Name>, its successors or assigns, all present or future owners of the Property, and all parties who now or hereafter have or hold any right, title or interest in or to the Property.

8. Emergency Procedures. ***(Include when applicable)***

[<Name> covenants that the procedures set forth below shall be followed when an emergency requires immediate excavation of contaminated soil in the [Property] ***[or]*** [Restricted Area(s)] to repair utility lines or other infrastructure on the Property, or to respond to other types of emergencies (e.g., fires, floods):

a. notify the Minnesota Duty Officer immediately of obtaining knowledge of such emergency conditions; the current phone numbers for the Duty Officer are 1-800-422-0798 (Greater Minnesota only); (651) 649-5451 (Twin Cities Metro Area and outside Minnesota); fax (any location) (651) 296-2300 and TDD (651) 297-5353 or 800-627-3529.

b. limit disturbance of contaminated media to the minimum reasonably necessary to adequately respond to the emergency;

c. undertake precautions to minimize exposure to workers, occupants and neighbors of the Property to contaminated media (e.g., provide appropriate types of protective clothing for workers conducting the excavation, and establish procedures for minimizing the dispersal of contaminated dust); and

d. prepare and implement a plan to restore the Property to a level that protects public health and the environment. Submit to the MPCA a copy of such a plan for review and approval prior to implementation of the plan. Submit a follow-up report after the plan is implemented so that the MPCA can determine whether protection of the public health and the environment has been restored.]

9. Disclosures. (*Include when applicable*)

[The Restrictions set forth in Section 2 [and the Maintenance Requirements in Section 3] of this Declaration shall be incorporated in full or by reference into all instruments conveying an interest in and/or a right to use the property (e.g., easements, mortgages, leases).]

In Witness Whereof, this instrument has been executed on this \_\_\_\_\_day of \_\_\_\_\_.

[NAME OF OWNER]

By \_\_\_\_\_ (Signature)

[Name] \_\_\_\_\_ (print)  
[Title] \_\_\_\_\_ (print)

State of Minnesota    )  
                                  ) SS.  
County of \_\_\_\_\_)

<Name>, being duly sworn by me under oath, has signed and acknowledged the foregoing instrument before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by <Name>, <Title and Company/Organization>, on behalf of <Name>, <Company/Organization>.

\_\_\_\_\_  
Notary Public

